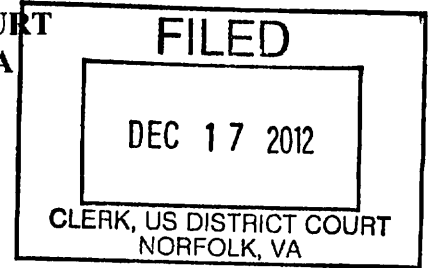


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**



TERRENCE GIBBS, #30947037, :

Petitioner, :

v. :

Civil Action No. 2:12cv128

ERIC WILSON, :

Respondent. :

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner seeks resentencing on a conspiracy charge for which he is currently serving a life sentence. He argues that federal precedent which rendered the federal sentencing guidelines advisory rather than mandatory have also rendered him “actually innocent of the life sentence imposed,” for his conspiracy conviction.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for a Report and Recommendation. The Report of the Magistrate Judge was filed on November 6, 2012 (ECF No. 9), recommending dismissal of the petition because Petitioner’s claim does not fall within the narrow range of habeas claims which may be brought by federal prisoners under the “savings provision” of 28 U.S.C. § 2255. By copy of the Report, each party was advised of his right to file written objections to the Report and Recommendations made by


the Magistrate Judge. On November 23, 2012, the Court received Petitioner's Objections to Magistrate's Report and Recommendation (ECF No. 10). The Respondent did not file a reply to the Objections and the time for filing a reply has now expired.

The Court, having reviewed the record and examined the objections filed by the Petitioner to the Magistrate Judge's Report and Recommendations and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report of the United States Magistrate Judge filed November 6, 2012, and it is, therefore, ORDERED that the petition be DENIED and DISMISSED. It is further ORDERED that judgment be entered in favor of Respondent.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within sixty (60) days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to the Petitioner and to counsel of record for the Respondent.



RAYMOND A. JACKSON
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

Date: 12/17/12